RECORD
AND
BRIEFS

SUPREME COURT, U.S.
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No. 10-1491

IN THE

Supreme Court of the United States

ESTHER KIOBEL, Individually and on Behalf of Her Late Husband, DR. BARINEM KIOBEL, ET AL.,
Petitioners,

V.

ROYAL DUTCH PETROLEUM CO., ET AL.,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF OF ELEVEN JEWISH FORMER RESIDENTS OF IRAN WHOSE FAMILY MEMBERS "DISAPPEARED," AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS

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QUESTION PRESENTED

Whether and under what circumstances the Alien Tort Statute, 28 U.S.C. § 1350, allows courts to recognize a cause of action for violations of the law of nations occurring within the territory of a sovereign other than the United States.

TABLE OF CONTENTS

QUESTION PRESENTED i

TABLE OF AUTHORITIES iii

INTEREST OF THE *AMICI* 1

STATUTORY AUTHORITY 2

SUMMARY OF ARGUMENT 2

ARGUMENT 4

I. Extraterritorial Application of the Alien Tort Statute Should be Presumed and is Necessary if the Statute is to Achieve its Objectives 4

II. Threshold Justiciability Requirements Significantly Limit the Extraterritorial Power of the Alien Tort Statute 10

CONCLUSION 12

APPENDIX A a1

APPENDIX B a16

TABLE OF AUTHORITIES

Cases **Page**

Asahi Metal Industry Co. v. Superior Court of Cal., Solano Cty., 480 U.S. 102 (1987) 10

Burger King Corp. v. Rudzewicz, 471 U.S. 462 (1985) 10

E.E.O.C. v. Arabian American Oil Co., 499 U.S. 244 (1991) 6

Fiore v. Walden, 657 F.3d 838 (9th Cir. 2011) 10

Int'l Shoe Co. v. State of Wash., 326 U.S. 310 (1945) 10

J. McIntyre Machinery, Ltd. v. Nicastro, ___ U.S. ___, 131 S.Ct. 2780 (2011) 10

Morrison v. Nat'l Austl. Bank, Ltd, ___ U.S. ___, 130 S.Ct. 2869 (2010) 2-3, 5-7

Sinochem Int'l Co. Ltd. v. Malay. Int'l Shipping Corp., 549 U.S. 422 (2007) 11

Statues and Regulations

22 U.S.C. § 2371 8

22 U.S.C. § 2780 8

28 U.S.C. § 1350 ..... *passim*

28 U.S.C. § 1350 note 4

28 U.S.C. § 1391 10

28 U.S.C. § 1605A 8

28 U.S.C. § 1610 8

28 U.S.C. § 1610 note 8

50 U.S.C. § 1702 8

50 App. U.S.C. § 2405 8

31 C.F.R. § 500.201 *et seq.* 8

Other Authorities

Congressman Frank Wolf, Wolf Asks IRS to Investigate Whether CAIR has Received or Solicited Funds from Foreign Governments, June 27, 2011, http://wolf.house.gov/index.cfm?sectionid=34&itemid=1761 11

FED. R. CIV. P. 4 10

Supplemental Brief of Petitioners, *Kiobel v. Royal Dutch Petroleum Co.*, No. 10-1491 (June 6, 2012) 5

INTEREST OF THE *AMICI*[1]

Amici are eleven former residents of the Islamic Republic of Iran.[2] All are Jews who were forced to flee from Iran, the country of their birth, in order to escape religiously motivated persecution. Members of their families were subsequently captured by Iranian officials as those family members attempted to escape Iran. Those captured have been detained—for doing nothing other than trying to reclaim their liberty—and have been subjected to brutal torture ever since. The *Amici* have not seen or heard from their detained family members for over fifteen years.

Amici turned to an international human rights law group, Shurat HaDin—Israel Law Center, headed by Israeli attorney, Nitsana Darshan-Leitner, who retained United States counsel on behalf of the *Amici*, and subsequently sued Seyed Mohammad Khatami, the former President of Iran, for damages. Their case is pending in the Eastern District of Virginia (docket number 1:08-cv-440) and has now been stayed pending the outcome of this appeal.

Amici went through extraordinary efforts to escape Iran and to gain service and personal jurisdiction over Khatami to try to gain redress for

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[1] The parties have consented to the filing of this brief, and such consents are on file with the Court. As required by Rule 37.6, *Amici* state that no counsel for a party authored this brief in whole or in part, and no person other than the *Amici* and their counsel made any monetary contribution intended to fund the preparation or submission of this brief.

[2] Their names: (1) Youssef Shaoulian–Tehrani; (2) Elana Tehrani; (3) Nahid Farangian; (4) Ilan Susan Farangian; (5) Simcha Razakansari; (6) Lior Kaharmany; (7) Beni Beheruz; (8) Daryush Salaari; (9) Orit Rabizadeh; (10) Linda Balazadeh (Ram); and (11) Irit Elchanan.

their suffering and for the suffering of their family members. To the best of their knowledge, they have no other means of gaining redress in any other country. If this Court holds that the Alien Tort Statute has no extraterritorial application, *Amici* will likely be unable to gain a judgment against those who have persecuted them and their family members.

Individual statements of interest are set forth in Appendix A.

STATUTORY AUTHORITY

The district courts shall have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States. 28 U.S.C. § 1350 ("Alien Tort Statute").

SUMMARY OF ARGUMENT

I. The Alien Tort Statute provides federal courts with jurisdiction to hear complaints by aliens aggrieved by violations of international law. For many such plaintiffs, this jurisdictional grant is a necessity—they have no other court to turn to. *Amici* fit that bill. They have been severely harmed under international law by officials of the Iranian government but have no recourse in Iran and likely have no recourse in any other jurisdiction in the world.

The availability of the Alien Tort Statute for extraterritorial harms might seem, at first glance, to be prohibited by the presumption against extraterritorial application articulated in *Morrison v.*

Nat'l Austl. Bank, Ltd, ___ U.S. ___, 130 S.Ct. 2869, 2881 (2010). But *Morrison* does not apply to jurisdictional statutes. Nor does it apply to statutes that merely incorporate international law. Norms of international comity likewise pose no bar to the extraterritorial application of the Alien Tort Statute.

Rather, the extraterritorial application of the Alien Tort Statute is governed by exploring its text, purpose, and intended function. The Alien Tort Statute is intended to provide a forum for harmed aliens who are now on American soil. Such claimants are probably typically aggrieved by actions that took place on foreign soil. To limit the Alien Tort Statute to solely domestic harms severely prevents the statute from achieving its intended objectives.

Given that such aliens often have no other remedy anywhere in the world—despite that the body of law upon which they rely is global—and the Alien Tort Statute was ostensibly written to assist such people and deny legal privilege to violators of international law, the Alien Tort Statute necessarily has extraterritorial application.

II. Finding that the Alien Tort Statute has extraterritorial application does not thereby open up the federal courts as a type of global forum available to all. The Alien Tort Statute merely provides subject matter jurisdiction. Other threshold justiciability requirements and limitations, such as service of process, personal jurisdiction, "fairness," venue, and *forum non conveniens*, significantly limit access to the federal courts.

Given that aliens seeking to use the Alien Tort Statute for extraterritorial harms likely intend to name a foreign defendant, those threshold

justiciability requirements will often impose a substantial hurdle. Indeed, *Amici* had to overcome substantial hurdles and needed quick action, ingenuity, and quite a lot of luck in order to initiate their action against the former President of Iran, Seyed Mohammad Khatami.

ARGUMENT

The Parties and the other *amici* will thoroughly debate the substantive questions relating to extraterritorial application of the Alien Tort Statute. Our objective is to demonstrate both the *propriety* of extraterritorial application and the often overlooked but very important *limitations* of extraterritoriality.

I. Extraterritorial Application of the Alien Tort Statute Should be Presumed and is Necessary if the Statute is to Achieve its Objectives

Amici are the family members of Persian Jewish citizens who were tortured by Iranian governmental officials and who have been arbitrarily detained and wrongfully imprisoned from 1994 to date. *Amici* have sued Seyed Mohammad Khatami, the former President of Iran, for damages arising from violations of the law of nations, the Torture Victim Protection Act, 28 U.S.C. § 1350 note, and the Alien Tort Statute, 28 U.S.C. § 1350. The harms committed against them took place in Iran. *Amici* have no ability to access the Iranian judicial system and—even if they did have access—have every reason to believe that they would not be able to get a fair trial in Iran.

There is no doubt that Congress had and retains the power to make the Alien Tort Statute apply extraterritorially. Without conceding the point, *Amici* will presume for the purposes of this brief that the First Congress left us with no indication as to its intentions regarding extraterritoriality.[3] In such situations, this Court has ruled that there is a presumption against extraterritoriality. *Morrison v. Nat'l Austl. Bank, Ltd,* ___ U.S. ___, 130 S.Ct. 2869, 2881 (2010). The salient question appears to be (but, in truth, is not) whether the presumption articulated in *Morrison* applies in the context of the Alien Tort Statute.

Morrison does not apply to jurisdictional statutes. Statutes that merely provide to a court "the power to hear a case" and do not decide the question of whether "the allegations the plaintiff makes entitle him to relief" create no presumption against extraterritorial application. *Morrison*, 130 S.Ct. at 2877 (internal citation and quotation marks omitted). The Alien Tort Statute is a jurisdictional statute and thus sits outside of *Morrison*.

While the Alien Tort Statute speaks to the question of whether the plaintiff's allegations entitle him to relief, it prescribes no law and decides no such questions. It merely incorporates the substantive law

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[3] *Amici* agree with and adopt the arguments in Part II of Petitioners' Supplemental Opening Brief. Supplemental Brief of Petitioners at 18-33, *Kiobel v. Royal Dutch Petroleum Co.*, No. 10-1491 (June 6, 2012). There, Petitioners argue convincingly that the First Congress adequately demonstrated its intent that the Alien Tort Statute provide jurisdiction for extraterritorial events. But, even if Petitioners' arguments in that regard are found to be wrong or their sources are found to be ambiguous, the Alien Tort Statute nonetheless provides jurisdiction for extraterritorial events for the reasons stated in the text.

of "the law of nations [and] treat[ies] of the United States"; it creates no new substantive law. 28 U.S.C. § 1350. The incorporation of background international law and the grant of jurisdiction to address that law in the federal courts do nothing to undermine the central purpose of the presumption against extraterritoriality: the desire to "protect against unintended clashes between our laws and those of other nations." *E.E.O.C. v. Arabian American Oil Co.*, 499 U.S. 244, 248 (1991) (superseded on other grounds by § 109 of the Civil Rights Act of 1991). The Alien Tort Statute is therefore not subject to the presumption against extraterritoriality.[4]

To the extent that the domestic law of a foreign nation is inconsistent with the law of nations—thus resulting in a conflict between the substantive law incorporated by the Alien Tort Statute and the domestic law of that foreign nation—the desire to avoid substantive conflict with that nation is no concern at all. The conflict of laws between the United States (indeed, the entire world) and that

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[4] This Court made clear in *Morrison* that the presumption applies "regardless of whether there is a risk of conflict between the American statute and a foreign law." *Morrison*, 130 S.Ct. at 2877-78. It created a bright-line rule in order to avoid the problems of "judicial-speculation-made-law" and the "unpredictable and inconsistent application" of federal statutes that resulted from it. *Id.* at 2880-81. That bright-line rule applies in cases where there is at least a risk—however remote—that extraterritorial application will result in a conflict of substantive law. As explained further in the text, that risk is entirely absent when the statute at issue merely *incorporates* the law of nations, a body of law that is obligatory upon all nations. The bright-line rule of *Morrison* thus has no application in the present case.

rogue state exists regardless of the existence of the Alien Tort Statute and regardless of whether that statute applies extraterritorially. Further, denying extraterritorial application in deference to the sovereignty of the rogue state would honor and sanction its illegal activity. The presumption against extraterritoriality was never intended to provide to violators of the law of nations the United States' assistance and legal privilege.

To the extent that foreign opposition to extraterritoriality comes not from rogue states but from law-abiding nations, that fact likewise does not raise the specter of *Morrison*. After all, by hypothesis, those nations would apply the same body of international law as would the United States. There is no concern, therefore, that the United States' application of the relevant substantive law will materially differ from that of the protesting nation.

International comity, a respect for the sovereignty of foreign nations, likewise is not directly implicated here. The Alien Tort Statute does not compel courts of the United States to disregard foreign judgments, compel foreign states to act or not act in a particular manner, or otherwise disregard foreign sovereignty. Rather, it merely subjects violators of international law to justice pursuant to the substantive law of nations. If the illegal actors are individuals who are not acting on behalf of their government, an action can proceed against those individuals without compromising comity at all. If the illegal actors are acting on behalf of their government, international comity does not prevent the United States' recognition of that fact and its taking adequate remedial measures in response. For example, the

United States has long had the practice of (1) identifying foreign states as "state sponsor[s] of terrorism,"[5] (2) seizing their assets,[6] and (3) awarding those assets to others.[7] It does all of this despite the fact that the designations, seizures, and awards are tremendously offensive to the sovereignty of the targeted states. The Alien Tort Statute—a jurisdictional statute—is far less offensive to international comity than the collection of laws described above.

In light of the above, there is no presumption against extraterritorial application of the Alien Tort Statute. Accordingly, the best normative approach to extraterritoriality—consistent with the purpose and function of the Alien Tort Statute—should govern.

The Alien Tort Statute provides federal jurisdiction for violations of international law. Its purpose plainly is to facilitate federal actions by aliens for violations of international law. Were it to apply only domestically, its independent ability to fulfill its purpose would be quite limited as many such violations would be covered by pure domestic law. Moreover, its intended beneficiaries, aliens who are living in the United States and who are aggrieved by violations of international law, are probably typically aggrieved by actions that took place on foreign soil. (Indeed, the very extraterritoriality of their harms is often the explanation for their presence on American soil and

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[5] *See* 28 U.S.C. § 1605A; *see also, e.g.*, 22 U.S.C. § 2371; 22 U.S.C. § 2780; 50 App. U.S.C. § 2405(j).

[6] *See, e.g.*, 22 U.S.C. § 2780; 50 App. U.S.C. § 2405(a); 50 U.S.C. § 1702; 31 C.F.R. § 500.201 *et seq.*

[7] 28 U.S.C. § 1610; 28 U.S.C. § 1610 note (§ 201 of the Terrorism Risk Insurance Act, Pub. L. 107-297, 116 Stat. 2337).

their need to rely on the federal judiciary rather than the judiciary of their home states.) Of course, none of this means that the Alien Tort Statute has *no* application for domestic harms. It does mean that to limit the Alien Tort Statute to domestic harms is to focus on minutiae and lose sight of the big picture.

If, indeed, a majority of the international harms faced by aliens takes place on foreign soil (and similarly did so at the time that the Alien Tort Statute was written),[8] a statute that was designed to give those aliens a remedy would include—and should be presumed to include—a remedy for actions that took place on foreign soil. This presumption is particularly strong in light of the fact that these aliens most probably have access to *no other remedy* anywhere in the world.

The Alien Tort Statute gives to federal courts the authority to uphold international law. It does so in perfect comity with the law-abiding nations of the world. It provides many who have been severely victimized at the hands of rogue foreign officials what might be their only chance to have their claims adjudicated. This Court should not exacerbate their suffering by taking that chance away.

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[8] Whether a majority of such harms take place extraterritorially is, of course, an empirical question. *Amici* are not aware of an empirical study that adequately resolves that question. But, for the reasons stated in the text, it is reasonable to presume that a majority of harms for which jurisdiction under the Alien Tort Statute is invoked (both now and at the time that the Alien Tort Statute was written) take place extraterritorially.

II. Threshold Justiciability Requirements Significantly Limit the Extraterritorial Power of the Alien Tort Statute

The extraterritoriality of the Alien Tort Statute does not yield a global unrestrained forum for judicial redress. All that it yields is subject matter jurisdiction. While subject matter jurisdiction is necessary for access to the court system, it is not all that a plaintiff needs to initiate litigation. The plaintiff must also adequately (1) *serve* the defendant, FED. R. CIV. P. 4, (2) establish *personal jurisdiction* over the defendant, *see Int'l Shoe Co. v. State of Wash.*, 326 U.S. 310 (1945) (no jurisdiction unless defendant has "minimum contacts" in forum state); *J. McIntyre Machinery, Ltd. v. Nicastro*, ___ U.S. ___, 131 S.Ct. 2780 (2011) (describing the requirements of "purposeful availment"), (3) establish that the exercise of jurisdiction comports with constitutional notions of *fairness*, *see Asahi Metal Industry Co. v. Superior Court of Cal., Solano Cty.*, 480 U.S. 102 (1987),[9] (4) establish that the chosen venue is a *proper venue*, 28 U.S.C. § 1391, and (5) establish that the proceeding should not be dismissed for *forum non conveniens* (to the extent that the defendant contends that a more convenient

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[9] *Amici* recognize that the fairness inquiry may have been altered by *J. McIntyre Machinery*. *See id.*, 131 S.Ct. at 2787 ("Freeform notions of fundamental fairness divorced from traditional practice cannot transform a judgment rendered in the absence of authority into law."). Nevertheless, lower courts seem to continue to be applying the standard originally created by *Burger King Corp. v. Rudzewicz*, 471 U.S. 462 (1985). *See, e.g., Fiore v. Walden*, 657 F.3d 838, 854-57 (9th Cir. 2011) (referring to the standard as "reasonableness").

forum exists abroad), *see Sinochem Int'l Co. Ltd. v. Malay. Int'l Shipping Corp.*, 549 U.S. 422 (2007).

Indeed, gaining access to the federal courts for actions that occurred abroad is a difficult matter. Subject matter is just one piece of that puzzle—albeit a significant one.

Amici know very well how difficult it is to initiate an action against a foreign national for illegal activity committed abroad. *Amici* are plaintiffs in federal district court against Seyed Mohammad Khatami, the former President of Iran, for the torture and illegal detainment of their family members. Serving and gaining personal jurisdiction over Khatami—a man who is not generally present in the United States, is not known to have attachable property in the United States, is constantly flanked by security, and disrespects our legal system—was no simple matter.

Amici learned that Khatami would be present in the United States on September 8, 2006, as the guest of honor at a dinner hosted by the Council on American Islamic Relations (CAIR), a domestic organization widely believed to be a co-conspirator with foreign terrorists.[10] They purchased a dinner ticket and paid an extra fee for the opportunity to have a picture taken with Khatami. They then gave that ticket to their process server, a former police detective. His ticket enabled him to get past Khatami's security entourage and safely approach Khatami. The process server successfully provided Khatami with personal service just as the

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[10] *See* Congressman Frank Wolf, Wolf Asks IRS to Investigate Whether CAIR has Received or Solicited Funds from Foreign Governments, June 27, 2011, http://wolf.house.gov/index.cfm?sectionid=34&itemid=1761.

photographer took their picture. The photograph showing Khatami's service of process is attached as Appendix B to this brief.

Amici's case against Khatami has been stayed pending the outcome of this appeal.

The Alien Tort Statute is a vital component of *Amici's* case. For certain claims it may be necessary; but by itself it is not sufficient. It is only through quick action, ingenuity, and quite a lot of luck that *Amici* were able to catch Khatami in the United States and initiate their action. Finding that the Alien Tort Statute applies to actions that occur on foreign soil will not yield the series of catastrophes that Respondents will, no-doubt, attempt to proffer to this Court. Granting subject matter jurisdiction for extraterritorial events merely addresses one piece in a large and complicated puzzle.

CONCLUSION

For the foregoing reasons, this Court should definitively announce that the Alien Tort Statute applies to events transpiring within the territory of a sovereign other than the United States.

Respectfully submitted,

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APPENDIX

APPENDIX A

INDIVIDUAL STATEMENTS OF INTEREST

Youssef Shaoulian–Tehrani. Mr. Tehrani left Iran in 1994 without his son who was, at the time, too young to obtain a passport. His son was supposed to escape Iran (without a passport) over an established land route and meet up with him two months later. His 1994 departure was the last time that he saw or heard from his son. Mr. Tehrani's son was arrested by Iranian officials as he attempted to escape and has been illegally detained in Iranian prisons ever since. A former neighbor of Mr. Tehrani's son saw him in an Iranian prison two years after his planned escape from Iran. Mr. Tehrani issued the following declaration to the district court:

> [My son's] disappearance has affected my life in every conceivable way. It was a great shock and blow to me emotionally. The anguish and pain of his continued absence is incessant; it is a black hole in my life. All the things that I wish we could have done together as father-and-son, his missed professional endeavors and all the life experiences he has been denied from his youth, keep me depressed. Even worse, to this day I cannot stop myself from imagining and worrying about what physical and mental hardships my son of only sixteen years old has had to endure.... [He] was my first-born son. In our tradition, a very special relationship exists between a father and his first-born son. I

> was a young father, proud and full of hope for [his] upbringing and future.... As his father who made that fateful decision for him to escape via the land border, I never stop feeling guilty. I never stop wondering about what [his] destiny might have been had I only chosen a different plan for his departure.... I have been suffering from depression and stress. I suffered two heart attacks and had to undergo open-heart surgery for replacement of three arteries in November 2004, at the age of 53.... We still think of him all the time. There isn't a day that passes for the past thirteen years in which I don't experience the deep loss and heartbreak of my child's disappearance. Although I live in freedom, I am a hostage....

He seeks relief against Khatami pursuant to the Alien Tort Statute.

Elana Tehrani. Ms. Tehrani left Iran in 1994 together with Mr. Youssef Shaoulian–Tehrani but without her son (as described with regard to Mr. Tehrani). Ms. Tehrani issued the following declaration to the district court:

> Even to this day it is difficult for me to express the extent of the feeling of deep despair that I experienced when I learned of [my son's] disappearance. Perhaps only a parent can truly understand how one feels when his or her child disappears. I felt as if I was truly drowning in anguish.

> Even though I was worried all the time about [his] safety, I was still not prepared for news like this. The terrorizing thought of [my son] being held by agents of the Islamic Republic was more than I could absorb. I was broken and I still am to this day.... I have cried so much that my tears have stopped since my eyes have become damaged from the stress. For many years I have been unable to sleep unless aided by the taking of strong sleeping pills....

She seeks relief against Khatami pursuant to the Alien Tort Statute.

Nahid Farangian. Ms. Farangian emigrated from Iran with her two sons in 1996. The last time she saw her husband, who did not have permission to emigrate, was at the Tehran airport just prior to her departure. Her husband attempted to escape over a land route but was captured by Iranian officials. Ms. Farangian issued the following declaration to the district court:

> The moment I found out about my husband's disappearance was very hard for me. I was at my mother-in-law's for the Sabbath (Friday evening) meal. Along with me were my children, my husband's brother (who had managed to arrive in Israel), my sister-in-law and their children. My husband's brother, Beni and I tried to keep the information to ourselves and not tell the horrible news to my mother-in-law. I will never forget this

evening as long as I live. A feeling of helplessness overwhelmed me and I couldn't stop crying, morning and night. I didn't know what to think and I was terrified. All day Saturday I couldn't function and on Sunday, in the Hebrew language course where I was studying, I refused to tell the teacher why I was crying. I didn't even tell my children.... When my oldest son heard the news he completely lost his mind and became inconsolable. Until this day, my children are grief-stricken and can't stop talking about the disappearance. My younger son is always terrified that something bad might happen to him.... During the first years, after the disappearance, I had obsessive thoughts about my husband. During the last two years, I learned to repress my thoughts and feelings, otherwise I am not able to function during the day. I am always sad, anguished and angry. I am very lonely in the evenings, alone in my house. I am in a deep depression. I feel constantly anxious and desperate. I even have suicidal thoughts.... My financial status is very bad. I live in a neglected apartment which is located in a very dangerous area in the city of Ashdod. Our neighborhood is full of criminals. I am afraid to walk to my apartment alone in the dark. The apartment belongs to a public company. Recently, they are trying to raise the rent and I cannot manage as I am already living in poverty. I don't have

> any savings or property. I always have overdrafts and my salary provides me only for half a month.... My husband was a photographer and we were middle class. We certainly never lived in poverty as my children and I live today.... Before the disappearance I was healthy, physically and psychologically. Today I feel very bad in every aspect: I have headaches, muscles aches, exhaustion and a lot of sadness, pain and rage. The mental and physical changes I experience are due to the crisis I had and am still going through....

She seeks relief against Khatami pursuant to the Alien Tort Statute.

Ilan Susan Farangian. Mr. Farangian was 14 when he immigrated to Israel with his mother and younger brother. The last time he saw his father, who did not have permission to emigrate, was at the Tehran airport in 1996. His father attempted to escape over a land route but was captured by Iranian officials. Mr. Farangian issued the following declaration to the district court:

> For long months I was in a deep depression, I cried often, and suffered from nightmares and from thoughts about him undergoing brutal tortures and the suffering that my father was going through.... My father's disappearance affected my life and my emotions very deeply. As a child who lost his father at a young age and since then, living in

> horrible uncertainty, I feel that I am not whole and until today I find I am focusing on my father's disappearance obsessively. Most of the time I am very sad, and generally I lack the joy of life. I tend to get angry easily, suffer from edginess, am very introverted and have a hard time making social connections.... After the disappearance of my father, I was treated by psychologist for about a year at the absorption center in Ashdod[, Israel]. Shortly afterwards, however, I had to stop the treatment and take care of myself because I had to be strong for my mother and my brother and support them financially and mentally. One year after I arrived in Israel, at the age of 15, I left school and started to work.

He seeks relief against Khatami pursuant to the Alien Tort Statute.

Simcha Razakansari. Ms. Razakansari left Iran in 1996 with her two young children. Her husband was not permitted to travel with them. Her husband attempted to escape Iran over a land route and was captured by Iranian officials. The day before her flight out of Iran was the last time Ms. Razakansari saw her husband. She issued the following declaration to the district court:

> When I found out about my husband's disappearance I was devastated, my feelings were unbearable. I cried constantly. Until this day, every time I

> think about my husband disappearing and that I don't know where he is and I may never see him again, I fall apart and cry, sometimes for days. I stay home most of the time. I feel hopeless and in pain, helpless and unstable. I don't feel like doing anything, and I am often not functional. My family has to take care of me and they never leave me alone.... My mental and emotional condition is very bad since the disappearance. Frequently I am stricken with depressions that lead me to mental breakdowns. Most of the time I am sad and depressed.... Today, in my medical and emotional condition, I can't work and support my family financially. Instead of supporting my children, they need to support me and I depend on them for almost everything. I can't stay by myself as I need my family to protect me....

She seeks relief against Khatami pursuant to the Alien Tort Statute.

Lior Kaharmany. Mr. Kaharmany escaped from Iran without permission in 1996 via a land route. His father likewise attempted to escape from Iran over a land route but was captured by Iranian officials. Mr. Kaharmany has not seen his father since his escape in 1996. He issued the following declaration to the district court:

> While the anxiety in any case of losing someone so close to you is understandable; an anxiety of losing this someone to an

inhumane and uninhibited system like the Islamic regimes' system, is inexplicable. I desperately feared for my father['s] safety.... About a half a year [after his capture], we were told ... by the Jewish Agency, that [my father had been transferred to] a prison named "Evin," in Teheran. This prison, "Evin," is infamous, even in terms of the brutality of the Islamic regime. In that prison the government holds political prisoners and people who object[] to the government and its system.... [T]he loss of my father in our lives is insufferable. Since my father's disappearance, we live with a heavy and bottomless sorrow in our hearts.... Personally, I carry this tragedy is in my heart all the time. In the past couple of years, I have made efforts to try to repress the thoughts and memories, however, it is pointless. Sometimes, memories of my father start to flood me, and if, for example, it happens during meal hour, I can no[] longer continue eating.... The responsibility that is imposed upon me is enormous. From my job as a [d]ental [t]echnician I support my mother, who is not working, and my brother and sister as well. The fact that I am supporting and taking care of my family has limited my possibilities in life, in the economic aspect and in my social and romantic relations as well. In fact, these financial burdens impose their will and obstruct me in every other aspect of my I can think of....

> Moreover, I experience bitter and frequent feelings of guilt for leaving the Islamic Republic, leaving my father behind me, out of a belief that he would manage to escape and live with his family in Israel. Although I despise the Ayatollahs' regime, with all the difficulties and suffering that has become the fate of the Jews in the Islamic Republic, I would never have left if I knew it meant not seeing my beloved father for so many years. My family is truly lost without my father....

He seeks relief against Khatami pursuant to the Alien Tort Statute.

Beni Beheruz. Mr. Beheruz left Iran in 1979, leaving behind his entire extended family. In 1996, two of his brothers and their immediate families attempted to escape. The women and children were permitted to fly to Israel, but the men were not. They attempted to escape over a land route and were captured. Mr. Beheruz issued the following declaration to the district court:

> The disappearance of my two brothers still deeply affects me. During the first two years after they disappeared, I could not stop thinking about them and about the whole situation. When I think about them in prison, and what they are going through, I become very sad. Sometimes a great sorrow attacks me and I get really depressed. I also tend to become angry easily and frequently.... My brothers'

> disappearance affected my parents severely. Since the disappearance, my mother has not laughed. Sometimes, she goes out of her house, and screams to the sky, asking G[-]d to bring her children home. My father often cries, his eyes filling with tears.... Most of all, I miss those small moments, which most people take for granted: the togetherness, wholeness and completeness; the holidays as a complete family, the Shabbat and all kinds of family events; the ability to share and consult. In fact, those very same moments, such as holidays or Shabbat, that are supposed to be happy and peaceful, are the most difficult times for me and my family.

He seeks relief against Khatami pursuant to the Alien Tort Statute.

Daryush Salaari. Mr. Salaari left Iran in 1987 when he was 20 years old. His brother disappeared in 1994 while trying to escape Iran over a land route. Mr. Salaari issued the following declaration to the district court:

> I was first informed about my brother's disappearance when I was in Ashdod, Israel with one of my brothers. At first I felt great anxiety, especially for my mother who took the bad news very hard, and became diabetic. During the first year of his disappearance our lives were a continuous nightmare, we couldn't stop crying. We were very worried about our

> parents who stayed in [Iran], about our older brother and our sister who also lived there at that time.... My brother's disappearance caused me great suffering, due to the horrible uncertainty, the longing for my beloved younger brother, and the concern of his fate. In addition, his disappearance contributed greatly to the death of my parents[—]especially my mother, may she rest in peace[—]who were very attached to my brother and experienced a great deal of suffering because of the disappearance. It was totally destructive for them, medically and mentally....

He seeks relief against Khatami pursuant to the Alien Tort Statute.

Orit Rabizadeh. Ms. Rabizadeh left Iran in 1996 with her four young children. Her husband was supposed to travel with her but was detained at the airport just prior to their flight. That was the last time Ms. Rabizadeh saw or heard from her husband. Ms. Rabizadeh issued the following declaration to the district court:

> When I understood that [my husband] disappeared, I was in Israel and with me were our four children who were very young at the time. I was living in a new country whose language I didn't speak, my means of supporting m[y]self were very limited and I was dependent on governmental assistance.... When [my

> husband] disappeared we were married for 15 years. Since [he] disappeared I have nightmares about Iranian prisons, solitary confinement, isolation and especially torture .... My children reacted in a very negative way to [their father's] disappearance. For years, they have been experiencing crying outbursts, difficulties in school, difficulties in social relations, sleeping problems and nightmares.... Before the disappearance I was healthy and full of life. Today I am in constant stress. I tend to l[o]se my patience quickly and I become angry from every little thing[. E]ven when it concerns my children, I lack joy of life, haunted by memories and fears day by day, since I know what the Islamic rule in Iran is capable of, and I suffer from sight problems and have constant joint infections....

She seeks relief against Khatami pursuant to the Alien Tort Statute.

Linda Balazadeh (Ram). Ms. Balazadeh was 31 years old when her husband disappeared in Iran. She and her husband had been living in Israel for several years when Mr. Balazadeh decided to return to Iran to liquidate his significant business concerns, and then return to Israel. As he could not leave Iran with permission, he attempted to escape over land through Pakistan. He set out on his journey back to Israel, and has not been seen since. Ms. Balazadeh issued the following declaration to the district court:

Despite that fact that [the facilities that are likely detaining my husband] are termed "secret prisons," it is well known that political convicts are being held in ghastly conditions and are regularly tortured. My husband is not a healthy man. The last years we were together he needed a walking cane, due to the nerve problem in his leg.... I believe my husband is suffering much more than others due to his defective physical condition.... The moment I truly realized my husband was missing I was stricken by hysteria and fainted. I experienced a mental breakdown, panic seizures and constant crying bursts, severe depression, difficulties in falling asleep, troubled sleep, nightmares about my husband and what he was going through in prison and other negative thoughts, including suicide.... At the time of my husband's disappearance our three children were aged twelve, eight and a year and a half. My husband's disappearance had a very bad influence on our children, but especially on the youngest one. My youngest never practically knew her father and she doesn't remember him at all. For years after the disappearance she kept asking me questions about her father: "Is he with somebody else, doesn't he love us anymore, why doesn't he call?..."

She seeks relief against Khatami pursuant to the Alien Tort Statute.

Irit Elchanan. Ms. Elchanan left Iran in 1975, prior to the Islamic Revolution. She is one of six children from a close-knit family. About ten years ago, two of her nephews, then aged 18 and 16, were captured by Iranian officials while trying to escape over a land route. She issued the following declaration to the district court:

> Before the disappearance, my mother was already elderly and suffered from many ailments; but after my nephews went missing her health rapidly deteriorated, especially her psychological state[.] My mother was always clear minded but since the disappearance she has lost connection with reality. Most of the day she calls out for [her] grandsons asking where they are. Living with my mother became very hard for me; it made us deal with the disappearance on a daily basis. After 4 years of this misery, my mother passed away, broken hearted over the disappearance in 1998[.]... [My brother and his wife] refuse to face reality. I can truthfully say that their life ended in the minute they found out about the disappearance. They are physically alive, but only walking and breathing and nothing more. They don't live a real life, and I am afraid of the false reality they have created for themselves.... My brother and his wife's psychological condition has

> also deteriorated greatly. As mentioned above, they do not face reality. During the weddings of their daughters they simply cried and cried.... At my daughters' weddings I cried and thought about my nephews and my poor brother. I don't feel whole anymore, no matter where I am. I feel very sorry for my brother [and] the drastic change he and his wife had to go through. It is always hard for me and there is always unease....

She seeks relief against Khatami pursuant to the Alien Tort Statute.

APPENDIX B

PICTURE OF KHATAMI BEING SERVED